

General Information Letter: Activities not protected under Public Law 86-272.

February 8, 1999

Dear:

This is in response to your letter dated September 9, 1998, in which you request a letter ruling. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter you have stated the following:

I am a CPA located in New Jersey who represents a corporate taxpayer located in Pennsylvania. The taxpayer performs advertising services which is done entirely at its Pennsylvania office. At one time, the taxpayer had payroll, rented office space and collected sales tax in Illinois. Presently, only sales tax is being collected.

My question is two-fold, first being, that since the taxpayer still collects sales tax, does this mean that they still must file an Illinois corporate return? Secondly, if they stop collecting sales tax, and have no payroll and no physical/resale in Illinois, do they still have to file a corporate tax return?

Also, please detail the criteria that a foreign corporation must file sales and corporate taxes in Illinois.

Response

Section 201 of the Illinois Income Tax Act imposes a tax measured by net income on corporations for the privilege of earning or receiving income in this State. You specify that your client sells services, so it is not protected by PL 86-272. That is the federal statute that prohibits a state's taxation of interstate sales of tangible personal property when the only activity of the corporation in the state is solicitation of orders. In order for a state to impose a tax, even on a service provider, the corporation must engage in sufficient activity in the taxing state to establish nexus. In that regard, the due process and commerce clause principles stated in *Quill v. North Dakota*, 504 US 298, must be observed. However, the question of nexus is highly fact-dependent and Illinois cannot provide prospective rulings. It will be examined only within the context of an audit, where the Department has access to relevant facts and circumstances.

If a corporation does establish nexus, business income will be apportioned to Illinois under Section 304 of the Illinois Income Tax Act, which applies a three-factor formula including ratios for property, payroll and sales, with sales double-weighted. Section 304(a)(3)(C) provides that sales other than sales of tangible personal property are in this State if the income producing activity is in this state, or the income producing activity is both within and without this State and a greater proportion of the income producing activity is performed within this State than without this State based on costs of performance.

Section 502(a)(2) of the Illinois Income Tax Act requires that a corporation which is authorized to do business in this State and is required to file a Federal income tax return will be required to file an Illinois income tax return regardless of whether the corporation is liable for Illinois income tax.

Your question about collection of sales tax has been referred to a different section of our office, which will reply separately.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Sincerely,

Kent R. Steinkamp
Staff Attorney -- Income Tax